

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ANDRE YANICK AINA,)
Plaintiff,)
vs.) Civil Action No. 3:19-cv-162
PENNSYLVANIA DEPT. OF)
CORRECTIONS, *et al.*,)
Defendants.)
Judge Stephanie L. Haines

MEMORANDUM AND ORDER OF COURT

This is a civil rights case brought under 42 U.S.C. § 1983 by Andre Yanick Aina (“Plaintiff”), a prisoner formerly incarcerated at SCI-Houtzdale. On June 2, 2020, this Court adopted Magistrate Judge Keith A. Pesto’s Report and Recommendation [Doc. 8] and dismissed the case with prejudice under the screening provisions of the Prison Litigation Reform Act [Doc. 10]. Plaintiff did not appeal. On April 28, 2021, nearly eleven months after the case was dismissed, Plaintiff filed a motion to reopen/refile the case based on “extraordinary circumstances” [Doc. 11]. This motion was referred to Magistrate Judge Keith A. Pesto for proceedings in accordance with the Federal Magistrates Act, 28 U.S.C. § 636, and Local Civil Rule 72.

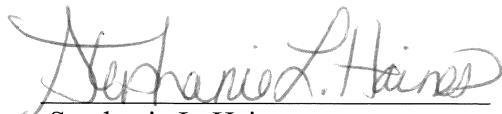
On May 4, 2021, Judge Pesto submitted a Report and Recommendation [Doc. 13] recommending that Plaintiff's motion to reopen, which is properly construed as a motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b), be denied. Plaintiff was notified that he had fourteen days from the date of service to file written objections to the Report and Recommendation. *See* 28 U.S.C. § 636 (b)(1)(B) and (C) and Local Civil Rule 72.D.2. Plaintiff did not file objections and the time to do so has expired.

Upon review of the record and the Report and Recommendation under the applicable “reasoned consideration” standard, *see E.E.O.C. v. City of Long Branch*, 866 F.3d 93, 100 (3d Cir. 2017) (standard of review when no timely and specific objections are filed), and pursuant to Local Civil Rule 72.D.2, the Court will accept in whole the findings and recommendations of the Magistrate Judge in this matter. Judge Pesto correctly found that the “extraordinary circumstances” advanced by Plaintiff are insufficient to warrant relief from judgment either under Rule 60(b)(1) for mistake, inadvertence, surprise or excusable neglect, *see Orie v. District Attorney Allegheny County*, 946 F.3d 187, 192 (3d Cir. 2019), or under Rule 60(b)(6) for any other reason that justifies relief, *see Sawka v. HealthEast, Inc.*, 989 F.2d 138, 140 (3d Cir. 1993).

Accordingly, the following order is entered:

ORDER OF COURT

AND NOW, this 21st day of June, 2021, for the reasons set forth in the Magistrate Judge’s Report and Recommendation [Doc. 13], which is adopted in whole as the opinion of the Court, IT IS ORDERED that Plaintiff’s motion to reopen/refile case based on extraordinary circumstances [Doc. 11] hereby is **denied**.



Stephanie L. Haines
United States District Judge